

No. 12456

United States  
Court of Appeals  
for the Ninth Circuit.

ESTATE OF R. L. LANGER, Deceased, ELEA-  
NORE LANGER, Executrix, ELEANORE  
LANGER, C. ABBOTT LINDSEY and PAU-  
LINE LINDSEY,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Transcript of Record

Upon Petition to Review a Decision of the Tax Court  
of the United States

**FILED**

MAR 18 1950

**PAUL P. O'BRIEN,**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

**CLERK**



No. 12456

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United States  
Court of Appeals  
for the Ninth Circuit.

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ESTATE OF R. L. LANGER, Deceased, ELEA-  
NORE LANGER, Executrix, ELEANORE  
LANGER, C. ABBOTT LINDSEY and PAU-  
LINE LINDSEY,

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vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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Upon Petition to Review a Decision of the Tax Court  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

For Petitioner:

DANA LATHAM, Esq.,

AUSTIN H. PECK, Jr., Esq.,

HENRY C. DIEHL, Esq.,

1112 Title Guarantee Building

411 West Fifth Street

Los Angeles 13, California.

For Respondent:

L. C. AARONS, Esq.,

Special Attorney,

Bureau of Internal Revenue.

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## APPEARANCES

For Petitioner:

DANA LATHAM, Esq.,

AUSTIN H. PECK, Jr., Esq.,

HENRY C. DIEHL, Esq.,

1112 Title Guarantee Building

411 West Fifth Street

Los Angeles 13, California.

For Respondent:

L. C. AARONS, Esq.,

Special Attorney,

Bureau of Internal Revenue.

## The Tax Court of the United States

Docket No. 16756

R. L. LANGER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated September 24, 1947, and as a basis of this proceeding alleges as follows:

## I.

Petitioner is an individual residing at 939 South Figueroa Street, Los Angeles 15, California. Petitioner's income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

## II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed to petitioner on September 24, 1947.

## III.

The taxes in controversy are federal income taxes for the calendar year 1944, in the amount of \$3,086.48.

IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(1) The respondent erroneously computed the tax upon \$5,000.00, representing petitioner's community one-half of \$10,000.00 compensation for personal services attributable to the years 1937, 1938, and 1939, upon the basis of including all of said sum in petitioner's 1944 income and taxing said entire amount at the rates applicable for the year 1944 rather than at the rates applicable for the years 1937, 1938, and 1939.

(2) Respondent erroneously failed and refused to compute the tax upon said \$5,000.00 of income at the rates applicable for the years 1937, 1938, and 1939, to which years said income was attributable.

(3) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1944 and erroneously failed and refused to apply said section in making such computation.

V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) During the years 1937 through 1944 and up to and including the present date, petitioner has been an officer of the Commodore Hotel Co., Ltd.,

1203 West Seventh Street, Los Angeles, California. Said corporation keeps its books and files its income tax returns on the cash receipts and disbursements basis.

(2) By appropriate action of its board of directors, evidenced by proper corporate resolution, Commodore Hotel Co., Ltd., undertook and agreed to pay to petitioner monthly from and after January 1, 1937, a salary of \$600.00 per month, said salary to continue monthly without interruption.

(3) During each of the years 1937, 1938 and 1939 said corporation suffered deficits from its operations and its capital was impaired. It owed substantial amounts to outside creditors. Because of its straitened circumstances it was unable, during each of said years, to pay to petitioner the full amount of salary which it had been authorized by its board of directors to pay, and which it had agreed to pay. The corporation, however, at all times recognized its liability for the full amount authorized to be paid to petitioner.

(4) During the year 1944 said corporation first found itself in a financial position which would permit it to pay to petitioner a portion of the back salary theretofore unpaid. During said year it actually paid to petitioner the sum of \$10,000.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of the unpaid salary of petitioner for the years 1937, 1938, and 1939.

(5) In preparing his federal income tax return for the calendar year 1944 petitioner and his wife reported as community property the receipt of said \$10,000.00 and computed the tax thereon in accordance with the provisions of Section 107 (d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

Wherefore petitioner prays that this court may hear this proceeding and determine:

(1) That respondent erred in the particulars set forth in paragraph IV of this petition.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK,

/s/ HENRY C. DIEHL,

Counsel for Petitioner.

December 11, 1947.

State of California,

County of Los Angeles—ss.

R. L. Langer, being first duly sworn, deposes and says: That he is the petitioner in the foregoing petition; that he has read said petition and is familiar with the facts contained therein, and that



said facts are true and correct to the best of his knowledge and belief.

/s/ R. L. LANGER.

Subscribed and sworn to before me this 12th day of December, 1947.

[Seal] /s/ ISOBEL V. HUGHES,  
Notary Public in and for the County of Los Angeles, State of California.

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EXHIBIT A

Form 1279

Treasury Department Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

Sept. 24, 1947.

Office of  
Internal Revenue Agent in Charge  
Los Angeles Division  
LA:IT:90D:LHP  
Mr. R. L. Langer  
c/o Hotel Figueroa  
939 South Figueroa Street  
Los Angeles 15, California

Dear Mr. Langer:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$3,086.48, as shown in the statement attached.

In accordance with the provisions of existing in-

ternal revenue law notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEORGE J. SCHOENEMAN,

Commissioner,

By /s/ GEORGE D. MARTIN,

Internal Revenue Agent  
in Charge.

Enclosures:

Statement

Form of waiver.

## Statement

LA:IT:90D:LHP

Mr. R. L. Langer

c/o Hotel Figueroa

939 South Figueroa Street

Los Angeles 15, California

## Tax Liability for the Taxable Year

Ended December 31, 1944

## Deficiency

Income tax .....\$3,086.48

In making this determination of your income tax liability careful consideration has been given to the report of examination dated March 21, 1947.

## Adjustment to Net Income

Taxable Year Ended December 31, 1944

Net income as disclosed by return.....\$29,912.40

Additional income:

(a) Compensation unreported..... 500.00

---

 Net income adjusted.....\$30,412.40

## Explanation of Adjustment

(a) There is added to income the amount of \$500.00 representing your community share of the value of living quarters and meals furnished you by your employer, during this taxable year, which you failed to report in your return.

In your return you disclose receipt in 1944 of compensation for personal services in the amount



of \$5,000.00 (your community one-half of \$10,000.00) attributable to the years 1937, 1938 and 1939, which you include in gross income. However, in the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1944.

It has been determined that the provisions of sections 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$5,000.00 represents income taxable at the rates in effect in the year received.

Computation of Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$30,412.40	
Less: Surtax exemption .....	500.00	
	<hr/>	
Surtax net income .....	\$29,912.40	
Surtax .....		\$13,165.69
Net income adjusted .....	\$30,412.40	
Less: Normal-tax exemption .....	500.00	
	<hr/>	
Net income subject to normal tax .....	\$29,912.40	
Normal tax at 3% .....		897.37
		<hr/>
Correct income tax liability .....		\$14,063.06
Income tax liability shown on return		
account No. 9005526 .....		10,976.58
		<hr/>
Deficiency of income tax .....		\$ 3,086.48

Received and filed T.C.U.S. Dec. 17, 1947.

Served Dec. 18, 1947.

[Title of Tax Court and Cause.]

### ORDER

On suggestion of death of the petitioner and notice of the appointment of an Executrix filed in the above-entitled proceeding, it is

Ordered, that Eleanore Langer, Executrix of the Estate of R. L. Langer, deceased, be substituted as petitioner in the place and stead of R. L. Langer, deceased, and that henceforth the caption of this proceeding shall be "Estate of R. L. Langer, deceased, Eleanore Langer, Executrix, Petitioner v. Commissioner of Internal Revenue, Respondent, Docket Number 16756."

[Seal]     /s/ JOHN W. KERN,  
                                Judge.

Dated: Washington, D. C., August 31, 1948.

cgh

Served Aug. 31, 1948.

The Tax Court of the United States

Docket No. 16757

ELEANORE LANGER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated September 24, 1947, and as a basis of this proceeding alleges as follows:

I.

Petitioner is an individual residing at 939 South Figueroa Street, Los Angeles 15, California. Petitioner's income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed to petitioner on September 24, 1947.

## III.

The taxes in controversy are federal income taxes for the calendar year 1944, in the amount of \$3,099.06.

## IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(1) The respondent erroneously computed the tax upon \$5,000.00, representing petitioner's community one-half of \$10,000.00 compensation for personal services paid to her husband and attributable to the years 1937, 1938, and 1939, upon the basis of including all of said sum in petitioner's 1944 income and taxing said entire amount at the rates applicable for the year 1944 rather than at the rates applicable for the years 1937, 1938, and 1939.

(2) Respondent erroneously failed and refused to compute the tax upon said \$5,000.00 of income at the rates applicable for the years 1937, 1938, and 1939, to which years said income was attributable.

(3) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1944 and erroneously failed and refused to apply said section in making such computation.

## V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) During the years 1937 through 1944 and up to and including the present date, petitioner's husband has been an officer of the Commodore Hotel Co., Ltd., 1203 West Seventh Street, Los Angeles, California. Said corporation keeps its books and files its income tax returns on the cash receipts and disbursements basis.

(2) By appropriate action of its board of directors, evidenced by proper corporate resolution, Commodore Hotel Co., Ltd., undertook and agreed to pay to petitioner's husband monthly from and after January 1, 1937, a salary of \$600.00 per month, said salary to continue monthly without interruption.

(3) During each of the years 1937, 1938 and 1939 said corporation suffered deficits from its operations and its capital was impaired. It owed substantial amounts to outside creditors. Because of its straitened circumstances it was unable, during each of said years, to pay to petitioner's husband the full amount of salary which it had been authorized by its board of directors to pay, and which it had agreed to pay. The corporation, however, at all times recognized its liability for the full amount authorized to be paid to petitioner's husband.

(4) During the year 1944 said corporation first found itself in a financial position which would permit it to pay to petitioner's husband a portion of the back salary theretofore unpaid. During said year it actually paid to petitioner's husband the



sum of \$10,000.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of the unpaid salary of petitioner's husband for the years 1937, 1938, and 1939.

(5) In preparing her federal income tax return for the calendar year 1944 petitioner and her husband reported as community property the receipt of said \$10,000.00 and computed the tax thereon in accordance with the provisions of Section 107 (d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

Wherefore petitioner prays that this court may hear this proceeding and determine:

(1) That respondent erred in the particulars set forth in paragraph IV of this petition.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

/s/ HENRY C. DIEHL,

Counsel for Petitioner.

December 11, 1947.

State of California,  
County of Los Angeles—ss.

Eleanore Langer, being first duly sworn, deposes and says: that she is the petitioner in the foregoing petition; that she has read said petition and is familiar with the facts contained therein, and that said facts are true and correct to the best of her knowledge and belief.

/s/ ELEANORE LANGER.

Subscribed and sworn to before me this 13th day of December, 1947.

[Seal]      /s/ D. C. WALTER,  
Notary Public in and for the County of Los Angeles,  
State of California.

My Commission Expires Aug. 11, 1950.

## EXHIBIT A

Form 1279

Treasury Department, Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

Office of  
Internal Revenue Agent in  
Charge

Sep 24, 1947

Los Angeles Division  
LA:IT:90D:LHP  
Mrs. Eleanore Langer  
c/o Hotel Figueroa  
939 South Figueroa Street  
Los Angeles 15, California

Dear Mrs. Langer:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944 discloses a deficiency of \$3,099.06, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward



it to the Internal Revenue Agent in Charge, Los Angeles, California for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours, ,

GEORGE J. SCHOENEMAN,

Commissioner,

By /s/ GEORGE D. MARTIN,

Internal Revenue Agent  
in Charge.

Enclosures:

Statement

Form of waiver

Statement

LA:IT:90D:LHP

Mrs. Eleanore Langer

c/o Hotel Figueroa

939 South Figueroa Street

Los Angeles 15, California

Tax Liability for the Taxable Year

Ended December 31, 1944

Deficiency

Income tax .....\$3,099.06

In making this determination of your income tax liability careful consideration has been given to the report of examination dated March 21, 1947.

Adjustment to Net Income  
Taxable Year Ended December 31, 1944

Net income as disclosed by return.....\$31,037.39

Additional income:

(a) Compensation unreported ..... 500.00

---

Net income adjusted .....\$31,537.39

Explanation of Adjustment

(a) There is added to income the amount of \$500.00 representing your community share of the value of living quarters and meals furnished you by your husband's employer, during this taxable year, which you failed to report in your return.

In your return you disclose receipt in 1944 of compensation for personal services in the amount of \$5,000.00 (your community one-half of \$10,000.00) attributable to services rendered by your husband in the years 1937, 1938 and 1939, which you include in gross income. However, in the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1944.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$5,000.00 represents income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$31,537.39
Less: Excess of net long-term capital gain over net short-term capital loss .....	1,125.00
Ordinary net income .....	\$30,412.39
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$29,912.39
Surtax on \$29,912.39 .....	13,165.68
Ordinary net income .....	\$30,412.39
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$29,912.39
Normal tax (3 per cent of \$29,912.39) .....	897.37
Partial tax .....	\$14,063.05
Plus: 50 per cent of \$1,125.00 .....	562.50
Alternative tax .....	\$14,625.55

Computation of Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$31,537.39
Less: Surtax exemption .....	500.00
Surtax net income .....	\$31,037.39
Surtax .....	\$13,863.18
Net income adjusted .....	\$31,537.39
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$31,037.39
Normal tax at 3% .....	931.12
Total normal tax and surtax .....	\$14,794.30
Alternative tax .....	\$14,625.55
Correct income tax liability .....	\$14,625.55
Income tax liability shown on return, account No. 9022948 .....	\$11,526.49
Deficiency of income tax .....	\$ 3,099.06

Received and filed T.C.U.S. Dec. 17, 1947.

Served Dec. 18, 1947.

## The Tax Court of the United States

Docket No. 18396

C. ABBOTT LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated February 19, 1948, and as a basis of this proceeding alleges as follows:

## I.

Petitioner is an individual residing at 1203 West Seventh Street, Los Angeles 14, California. Petitioner's income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

## II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed to petitioner on February 19, 1948.

## III.

The taxes in controversy are federal income taxes for the calendar years 1944 and 1945, as follows:

1944 .....	\$2,041.07
1945 .....	2,867.32
<hr/>	
Total .....	\$4,908.39

## IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(1) The respondent erroneously computed the tax upon \$4,400.00, representing petitioner's community one-half of \$8,800.00 compensation for personal services paid to him and attributable to the years 1938 and 1939, upon the basis of including all of said sum in petitioner's 1944 income and taxing said entire amount at the rates applicable for the year 1944 rather than at the rates applicable for the years 1938 and 1939.

(2) Respondent erroneously failed and refused to compute the tax upon said \$4,400.00 of income at the rates applicable for the years 1938 and 1939, to which years said income was attributable.

(3) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1944 and erroneously failed and refused to apply said section in making such computation.



(4) The respondent erroneously computed the tax upon \$5,750.00, representing petitioner's community one-half of \$11,500.00 compensation for personal services paid to him and attributable to the years 1939 and 1940, upon the basis of including all of said sum in petitioner's 1945, income and taxing said entire amount at the rates applicable for the year 1945 rather than at the rates applicable for the years 1939 and 1940.

(5) Respondent erroneously failed and refused to compute the tax upon said \$5,750.00 of income at the rates applicable for the years 1939 and 1940, to which years said income was attributable.

(6) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1945 and erroneously failed and refused to apply said section in making such computation.

## V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) During the years 1937 through 1945 and up to and including the present date, petitioner has been an officer of the Commodore Hotel Co., Ltd., 1203 West Seventh Street, Los Angeles, California. Said corporation keeps its books and files its income tax returns on the cash receipts and disbursements basis.

(2) By appropriate action of its board of directors, evidenced by proper corporate resolution, Commodore Hotel Co., Ltd., undertook and agreed to pay to petitioner monthly from and after January 1, 1937, a salary of \$600.00 per month, said salary to continue monthly without interruption.

(3) During each of the years 1938, 1939 and 1940, said corporation suffered deficits from its operations and its capital was impaired. It owed substantial amounts to outside creditors. Because of its straitened circumstances it was unable, during each of said years, to pay to petitioner the full amount of salary which it had been authorized by its board of directors to pay, and which it had agreed to pay. The corporation, however, at all times recognized its liability for the full amount authorized to be paid to petitioner.

(4) During the year 1944 said corporation first found itself in a financial position which would permit it to pay to petitioner a portion of the back salary theretofore unpaid. During said year it actually paid to petitioner the sum of \$8,800.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of the unpaid salary of petitioner for the years 1938 and 1939.

(5) In preparing their federal income tax returns for the calendar year 1944 petitioner and his wife reported as community property the receipt of said \$8,800.00 and computed the tax thereon in

accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

(6) During the year 1945 said corporation paid to petitioner the sum of \$11,500.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of petitioner's unpaid salary for the years 1939 and 1940.

(7) In preparing their federal income tax returns for the calendar year 1945 petitioner and his wife reported as community property the receipt of said \$11,500.00 and computed the tax thereon in accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

Wherefore, petitioner prays that this court may hear this proceeding and determine:

(1) That respondent erred in the particulars set forth in paragraph IV of this petition.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

/s/ HENRY C. DIEHL,

Counsel for Petitioner.

May 6, 1948



State of California,  
County of Los Angeles—ss.

C. Abbott Lindsey, being first duly sworn, deposes and says: That he is the petitioner in the foregoing petition; that he has read said petition and is familiar with the facts contained therein, and that said facts are true and correct to the best of his knowledge and belief.

/s/ C. ABBOTT LINDSEY.

Subscribed and sworn to before me this 6th day of May, 1948.

[Seal]                      ISOBEL V. HUGHES,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 4, 1948.

## EXHIBIT A

Form 1279 (Rev. Mar. 1946)

SN-IT-7

Treasury Department, Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

February 19, 1948

Office of  
Internal Revenue Agent in Charge  
Los Angeles Division  
LA:IT:90D:LHP  
Mr. C. Abbott Lindsey  
1203 West Seventh Street  
Los Angeles 14, California

Dear Mr. Lindsey:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944 and 1945, discloses a deficiency of \$4,908.39, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,

Commissioner,

By GEORGE D. MARTIN,

Internal Revenue Agent

in Charge.

Enclosures:

Statement

Form of waiver

Statement

LA:IT:90D:LHP

Mr. C. Abbott Lindsey

1203 West Seventh Street

Los Angeles 14, California

Tax Liability for the Taxable Years

Ended December 31, 1944 and 1945

Year	Deficiency
1944 Income tax .....	\$2,041.07
1945 Income tax .....	2,867.32
<hr/>	
Total .....	\$4,908.39

In making this determination of your income tax liability careful consideration has been given to the report of examination dated March 17, 1947.

### Adjustment to Net Income

Taxable Year Ended December 31, 1944

Net income as disclosed by return.....\$21,841.76

Additional deduction:

(a) Standard deduction ..... 250.00

---

Net income adjusted.....\$21,591.76

### Explanation of Adjustment

(a) In your return you elect to take the standard deduction provided in section 23 (aa)(1) of the Internal Revenue Code, but claim only \$250.00 of the \$500.00 allowable. An additional deduction of \$250.00 is accordingly allowed.

In your return you disclose receipt in 1944 of compensation for personal services in the amount of \$4,400.00 (your community half of \$8,800.00) attributable to the years 1938 and 1939 which you include in gross income. However, in the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1944.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$4,400.00 con-

stitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76
Less: Excess of net long-term capital gain over net short-term capital loss.....	1,550.09
Ordinary net income .....	\$20,041.67
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$19,541.67
Surtax on \$19,541.67 .....	7,017.09
Ordinary net income .....	\$20,041.67
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$19,541.67
Normal tax (3 per cent of \$19,541.67) .....	586.25
Partial tax .....	\$ 7,603.34
Plus: 50 per cent of \$1,550.09 .....	775.04
Alternative tax .....	\$ 8,378.38

Computation of Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76
Less: Surtax exemption .....	500.00
Surtax net income .....	\$21,091.76
Surtax .....	\$ 7,871.39
Net income adjusted .....	\$21,591.76
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$21,091.76
Normal tax at 3% .....	632.75
Total normal tax and surtax .....	\$ 8,504.14
Alternative tax .....	\$ 8,378.38
Correct income tax liability .....	\$ 8,378.38
Income tax liability shown on return, account No. 9020900 .....	6,337.31
Deficiency of income tax .....	\$ 2,041.07



## Net Income

Taxable Year Ended December 31, 1945

The net income of \$25,746.91 disclosed in your return is accepted as correct.

In your return you disclose receipt in 1945 of compensation for personal services in the amount of \$5,750.00 (your community half of \$11,500.00) attributable to the years 1939 and 1940. In the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1945.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$5,750.00 constitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Excess of net long-term capital gain over net short-term capital loss .....	4,610.63
Ordinary net income .....	\$21,136.28
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$20,636.28
Surtax on \$20,636.28 .....	\$ 7,616.32
Ordinary net income .....	\$21,136.28
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$20,636.28
Normal tax (3 per cent of \$20,636.28) .....	619.09
Partial tax .....	\$ 8,235.41
Plus: 50 per cent of \$4,610.63 .....	2,305.31
Alternative tax .....	\$10,540.72

Computation of Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Surtax exemption .....	500.00
Surtax net income .....	\$25,246.91
Surtax .....	\$10,295.68
Net income .....	\$25,746.91
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$25,246.91
Normal tax at 3% .....	757.41
Total normal tax and surtax .....	\$11,053.09
Alternative tax .....	\$10,540.72
Correct income tax liability .....	\$10,540.72
Income tax liability shown on return, acct. No. 2381798 .....	7,673.40
Deficiency of income tax .....	\$ 2,867.32

Received and filed T.C.U.S., May 11, 1948.

Served May 12, 1948.

[Title of Tax Court and Cause.]

Docket No. 18396

### AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated February 19, 1948, and as a basis of this proceeding alleges as follows:

#### I.

Petitioner is an individual residing at 1203 West Seventh Street, Los Angeles 14, California. Petitioner's income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

#### II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed to petitioner on February 19, 1948.

#### III.

The taxes in controversy are federal income taxes for the calendar years 1944 and 1945, as follows:

1944	.....	\$2,041.07
1945	.....	2,867.32
		<hr/>
Total	.....	\$4,908.39

#### IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:



(1) The respondent erroneously computed the tax upon \$5,000.00, representing petitioner's community one-half of \$10,000.00 compensation for personal services paid to him and attributable to the years 1937, 1938, and 1939, upon the basis of including all of said sum in petitioner's 1944 income and taxing said entire amount at the rates applicable for the year 1944 rather than at the rates applicable for the years 1937, 1938, and 1939.

(2) Respondent erroneously failed and refused to compute the tax upon said \$5,000.00 of income at the rates applicable for the years 1937, 1938, and 1939, to which years said income was attributable.

(3) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1944 and erroneously failed and refused to apply said section in making such computation.

(4) The respondent erroneously computed the tax upon \$5,750.00, representing petitioner's community one-half of \$11,500.00 compensation for personal services paid to him and attributable to the years 1939 and 1940, upon the basis of including all of said sum in petitioner's 1945 income and taxing said entire amount at the rates applicable for the year 1945 rather than at the rates applicable for the years 1939 and 1940.

(5) Respondent erroneously failed and refused

to compute the tax upon said \$5,750.00 of income at the rates applicable for the years 1939 and 1940, to which years said income was attributable.

(6) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1945 and erroneously failed and refused to apply said section in making such computation.

(7) The respondent erred in failing and refusing to determine that petitioner has overpaid his income taxes for the calendar year 1944.

## V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) During the years 1937 through 1945 and up to and including the present date, petitioner has been an officer of the Commodore Hotel Co., Ltd., 1203 West Seventh Street, Los Angeles, California. Said corporation keeps its books and files its income tax returns on the cash receipts and disbursements basis.

(2) By appropriate action of its board of directors, evidenced by proper corporate resolution, Commodore Hotel Co., Ltd., undertook and agreed to pay to petitioner monthly from and after January 1, 1937, a salary of \$600.00 per month, said salary to continue monthly without interruption.

(3) During each of the years 1937, 1938, 1939

and 1940, said corporation suffered deficits from its operations and its capital was impaired. It owed substantial amounts to outside creditors. Because of its straitened circumstances it was unable, during each of said years, to pay to petitioner the full amount of salary which it had been authorized by its board of directors to pay, and which it had agreed to pay. The corporation, however, at all times recognized its liability for the full amount authorized to be paid to petitioner.

(4) During the year 1944 said corporation first found itself in a financial position which would permit it to pay to petitioner a portion of the back salary theretofore unpaid. During said year it actually paid to petitioner the sum of \$10,000.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of the unpaid salary of petitioner for the years 1937, 1938, and 1939.

(5) In preparing their federal income tax returns for the calendar year 1944 petitioner and his wife reported as community property the receipt of said \$10,000.00 and computed the tax thereon in accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

(6) During the year 1945 said corporation paid to petitioner the sum of \$11,500.00 on account of said back salary, which amount was attributable

to the discharge, to the extent possible, of petitioner's unpaid salary for the years 1939 and 1940.

(7) In preparing their federal income tax returns for the calendar year 1945 petitioner and his wife reported as community property the receipt of said \$11,500.00 and computed the tax thereon in accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

(8) Petitioner's income tax return for the calendar year 1944 disclosed a liability for taxes in the amount of \$6337.31, which amount was paid on or before March 15, 1945. Petitioner's correct tax liability for said year 1944 is \$5607.42. Petitioner has overpaid his 1944 income taxes in the amount of \$729.84, and refund of said amount is hereby claimed.

Wherefore, petitioner prays that this court may hear this proceeding and determine:

(1) That respondent erred in the particulars set forth in paragraph IV of this petition.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

/s/ HENRY C. DIEHL,

Counsel for Petitioner.

January 25, 1949.

State of California,  
County of Los Angeles—ss.

C. Abbott Lindsey, being first duly sworn, deposes and says: That he is the petitioner in the foregoing petition; that he has read said petition and is familiar with the facts contained therein, and that said facts are true and correct to the best of his knowledge and belief.

s/ C. ABBOTT LINDSEY.

Subscribed and sworn to before me this 7th day of February, 1949.

[Seal]      /s/ LILLIAN S. FOLTZ,  
Notary Public in and for the County of Los Angeles, State of California.



## EXHIBIT A

Form 1279 (Rev. Mar. 1946)

SN-IT-7

Treasury Department, Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

February 19, 1948.

Office of

Internal Revenue Agent in Charge

Los Angeles Division

LA:IT:90D:LHP

Mr. C. Abbott Lindsey

1203 West Seventh Street

Los Angeles 14, California

Dear Mr. Lindsey:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, and 1945, discloses a deficiency of \$4,908.39, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and for-



ward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,

Commissioner.

By GEORGE D. MARTIN,

Internal Revenue Agent in Charge.

Enclosures:

Statement

Form of waiver

Statement

LA:IT:90D:LHP

Mr. C. Abbott Lindsey

1203 West Seventh Street

Los Angeles 14, California

Tax Liability for the Taxable Years  
Ended December 31, 1944, and 1945

Year	Deficiency
1944 Income Tax.....	\$2,041.07
1945 Income Tax.....	2,867.32
Total .....	<hr/> \$4,908.39

In making this determination of your income tax liability careful consideration has been given to the report of examination dated March 17, 1947.

### Adjustment to Net Income

Taxable Year Ended December 31, 1944

Net income as disclosed by return.....\$21,841.76

Additional deduction:

(a) Standard deduction ..... 250.00

---

Net income adjusted.....\$21,591.76

### Explanation of Adjustment

(a) In your return you elect to take the standard deduction provided in section 23(aa)(1) of the Internal Revenue Code, but claim only \$250.00 of the \$500.00 allowable. An additional deduction of \$250.00 is accordingly allowed.

In your return you disclose receipt in 1944 of compensation for personal services in the amount of \$4,400.00 (your community half of \$8,800.00) attributable to the years 1938 and 1939 which you include in gross income. However, in the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1944.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$4,400.00 con-

stitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76
Less: Excess of net long-term capital gain over net short-term capital loss .....	1,550.09
Ordinary net income .....	\$20,041.67
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$19,541.67
Surtax on \$19,541.67 .....	7,017.09
Ordinary net income .....	\$20,041.67
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$19,541.67
Normal tax (3 per cent of \$19,541.67) .....	586.25
Partial tax .....	\$ 7,603.34
Plus: 50 per cent of \$1,550.09 .....	775.04
Alternative tax .....	\$ 8,378.38

Computation of Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76
Less: Surtax exemption .....	500.00
Surtax net income .....	\$21,091.76
Surtax .....	\$ 7,871.39
Net income adjusted .....	\$21,591.76
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$21,091.76
Normal tax at 3% .....	632.75
Total normal tax and surtax .....	\$ 8,504.14
Alternative tax .....	8,378.38
Correct income tax liability .....	\$ 8,378.38
Income tax liability shown on return account No. 9020900 .....	6,337.31
Deficiency of income tax .....	\$ 2,041.07

## Net Income

Taxable Year Ended December 31, 1945

The net income of \$25,746.91 disclosed in your return is accepted as correct.

In your return you disclose receipt in 1945 of compensation for personal services in the amount of \$5,750.00 (your community half of \$11,500.00) attributable to the years 1939 and 1940. In the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1945.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$5,750.00 constitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Excess of net long-term capital gain over net short-term capital loss .....	4,610.63
Ordinary net income .....	\$21,136.28
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$20,636.28
Surtax on \$20,636.28 .....	\$ 7,616.32
Ordinary net income .....	\$21,136.28
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$20,636.28
Normal tax (3% of \$20,636.28) .....	619.09
Partial tax .....	\$ 8,235.41
Plus: 50% of \$4,610.63 .....	2,305.31
Alternative tax .....	\$10,540.72

Computation of Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Surtax exemption .....	500.00
Surtax net income .....	\$25,246.91
Surtax .....	\$10,295.68
Net income .....	\$25,746.91
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$25,246.91
Normal tax at 3% .....	757.41
Total normal tax and surtax .....	\$11,053.09
Alternative tax .....	\$10,540.72
Correct income tax liability .....	\$10,540.72
Income tax liability shown on return account No. 2381798 .....	7,673.40
Deficiency of income tax .....	\$ 2,867.32

Filed T.C.U.S. Feb. 9, 1949.

Served March 1, 1949.



The Tax Court of the United States

Docket No. 18397

PAULINE LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated February 19, 1948, and as a basis of this proceeding alleges as follows:

#### I.

Petitioner is an individual residing at 1203 West Seventh Street, Los Angeles 14, California. Petitioner's income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

#### II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A", was mailed to petitioner on February 19, 1948.

#### III.

The taxes in controversy are federal income taxes for the calendar years 1944 and 1945, as follows:



1944 .....	\$2,041.07
1945 .....	2,867.32
	<hr/>
Total .....	\$4,908.39

## IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(1) The respondent erroneously computed the tax upon \$4,400.00 representing petitioner's community one-half of \$8,800.00 compensation for personal services paid to her husband and attributable to the years 1938 and 1939, upon the basis of including all of said sum in petitioner's 1944 income and taxing said entire amount at the rates applicable for the year 1944 rather than at the rates applicable for the years 1938 and 1939.

(2) Respondent erroneously failed and refused to compute the tax upon said \$4,400.00 income at the rates applicable for the years 1938 and 1939, to which years said income was attributable.

(3) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1944 and erroneously failed and refused to apply said section in making such computation.

(4) The respondent erroneously computed the tax upon \$5,750.00, representing petitioner's community one-half of \$11,500.00 compensation for per-

sonal services paid to petitioner's husband and attributable to the years 1939 and 1940, upon the basis of including all of said sum in petitioner's 1945 income and taxing said entire amount at the rates applicable for the year 1945 rather than at the rates applicable for the years 1939 and 1940.

(5) Respondent erroneously failed and refused to compute the tax upon said \$5,750.00 of income at the rates applicable for the years 1939 and 1940, to which years said income was attributable.

(6) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1945 and erroneously failed and refused to apply said section in making such computation.

## V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) During the years 1937 through 1945, and up to and including the present date, petitioner's husband has been an officer of the Commodore Hotel Co., Ltd., 1203 West Seventh Street, Los Angeles, California. Said corporation keeps its books and files its income tax returns on the cash receipts and disbursements basis.

(2) By appropriate action of its board of directors evidenced by proper corporate resolution, Commodore Hotel Co., Ltd., undertook and agreed to

pay to petitioner's husband monthly from and after January 1, 1937, a salary of \$600.00 per month, said salary to continue monthly without interruption.

(3) During each of the years 1938, 1939 and 1940, said corporation suffered deficits from its operations and its capital was impaired. It owed substantial amounts to outside creditors. Because of its straitened circumstances it was unable, during each of said years, to pay to petitioner's husband the full amount of salary which it had been authorized by its board of directors to pay, and which it had agreed to pay. The corporation, however, at all times recognized its liability for the full amount authorized to be paid to petitioner's husband.

(4) During the year 1944 said corporation first found itself in a financial position which would permit it to pay to petitioner's husband a portion of the back salary theretofore unpaid. During said year it actually paid to petitioner's husband the sum of \$8,800.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of the unpaid salary of petitioner's husband for the years 1938 and 1939.

(5) In preparing their federal income tax returns for the calendar year 1944 petitioner and her husband reported as community property the receipt of said \$8,800.00 and computed the tax thereon in accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has

refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

(6) During the year 1945 said corporation paid to petitioner's husband the sum of \$11,500.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of petitioner's husband's unpaid salary for the years 1939 and 1940.

(7) In preparing their federal income tax returns for the calendar year 1945 petitioner and her husband reported as community property the receipt of said \$11,500.00 and computed the tax thereon in accordance with the provisions of Section 107 (d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

Wherefore, petitioner prays that this court may hear this proceeding and determine:

(1) That respondent erred in the particulars set forth in paragraph IV of this petition.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

/s/ HENRY C. DIEHL,

Counsel for Petitioner.

May 6, 1948.

State of California,  
County of Los Angeles—ss.

Pauline Lindsey, being first duly sworn, deposes and says: That she is the petitioner in the foregoing petition; that she has read said petition and is familiar with the facts contained therein, and that said facts are true and correct to the best of her knowledge and belief.

/s/ PAULINE LINDSEY.

Subscribed and sworn to before me this 6th day of May, 1948.

[Seal] /s/ ISOBEL V. HUGHES,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 4, 1948.



## EXHIBIT A

Form 1279 (Rev. Mar. 1946)

SN-IT-7

Treasury Department Internal Revenue Service

417 South Hill Street

Los Angeles 13, California

Feb. 19, 1948

Internal Revenue

Agent In Charge

Los Angeles Division

LA:IT:90D:LHP

Mrs. Pauline Lindsey

1203 West 7th Street

Los Angeles 14, California

Dear Mrs. Lindsey:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944 and 1945 discloses a deficiency of \$4,908.39, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are



requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,

Commissioner,

By GEORGE D. MARTIN,

Internal Revenue Agent

in Charge.

Enclosures:

Statement

Form of waiver

Statement

LA:IT:90D:LHP

Mrs. Pauline Lindsey

1203 West 7th Street

Los Angeles 14, California

Tax Liability for the Taxable Years

Ended December 31, 1944 and 1945

Years	Deficiency
1944 Income Tax.....	\$2,041.07
1945 Income Tax.....	2,867.32

---

Total .....\$4,908.39

In making this determination of your income tax liability careful consideration has been given to the report of examination dated March 17, 1947.

### Adjustment to Net Income

Taxable Year Ended December 31, 1944

Net income as disclosed by return.....\$21,841.76

Additional deduction:

(a) Standard deduction ..... 250.00

---

Net income adjusted.....\$21,591.76

### Explanation of Adjustment

(a) In your return you elect to take the standard deduction provided in section 23(aa)(1) of the Internal Revenue Code, but claim only \$250.00 of the \$500.00 allowable. An additional deduction of \$250.00 is accordingly allowed.

In your return you disclose receipt in 1944 of compensation for personal services in the amount of \$4,400.00 (your community half of \$8,800.00) attributable to the years 1938 and 1939 which you include in gross income. However, in the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1944.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not

applicable, and that the aforementioned \$4,400.00 constitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76	
Less: Excess of net long-term capital gain over net short-term capital loss .....		1,550.08
Ordinary net income .....	\$20,041.68	
Less: Surtax exemption .....	500.00	
Balance (surtax net income) .....	\$19,541.68	
Surtax on \$19,541.68 .....	\$ 7,017.09	
Ordinary net income .....	\$20,041.68	
Less: Normal tax exemption .....	500.00	
Balance subject to normal tax .....	\$19,541.68	
Normal tax (3% of \$19,541.68) .....		586.25
Partial tax .....	\$ 7,603.34	
Plus: 50% of \$1,550.08 .....		775.04
Alternative tax .....	\$ 8,378.38	

Computation of Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76	
Less: Surtax exemption .....	500.00	
Surtax net income .....	\$21,091.76	
Surtax .....		\$ 7,871.39
Net income adjusted .....	\$21,591.76	
Less: Normal-tax exemption .....	500.00	
Net income subject to normal tax .....	\$21,091.76	
Normal tax at 3% .....		632.75
Total normal tax and surtax .....	\$ 8,504.14	
Alternative tax .....	\$ 8,378.38	
Correct income tax liability .....	\$ 8,378.38	
Income tax liability shown on return, account No. 9020901 .....		6,337.31
Deficiency of income tax .....	\$ 2,041.07	

## Net Income

Taxable Year Ended December 31, 1945

The net income of \$25,746.91 disclosed in your return is accepted as correct.

In your return you disclose receipt in 1945 of compensation for personal services in the amount of \$5,750.00 (your community half of \$11,500.00) attributable to the years 1939 and 1940. In the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1945.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$5,750.00 constitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1945

Net Income .....	\$25,746.91
Less: Excess of net long-term capital gain over net short-term capital loss .....	4,610.63
Ordinary net income .....	\$21,136.28
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$20,636.28
Surtax on \$20,636.28 .....	\$ 7,616.32
Ordinary net income .....	\$21,136.28
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$20,636.28
Normal tax (3 per cent of \$20,636.28) .....	619.09
Partial tax .....	\$ 8,235.41
Plus: 50 per cent of \$4,610.63 .....	2,305.31
Alternative tax .....	\$10,540.72

Computation of Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Surtax exemption .....	500.00
Surtax net income .....	\$25,246.91
Surtax .....	\$10,295.68
Net income .....	\$25,746.91
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$25,246.91
Normal tax at 3% .....	757.41
Total normal tax and surtax .....	\$11,053.09
Alternative tax .....	\$10,540.72
Correct income tax liability .....	\$10,540.72
Income tax liability shown on return, acct. No. 2381797 .....	7,673.40
Deficiency of income tax .....	\$ 2,867.32

Received and filed T. C. U. S. May 11, 1949.

Served Mar. 12, 1949.



[Title of Tax Court and Cause.]

Docket No. 18397

### AMENDED PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated February 19, 1948, and as a basis of this proceeding alleges as follows:

#### I.

Petitioner is an individual residing at 1203 West Seventh Street, Los Angeles 14, California. Petitioner's income tax return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

#### II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A", was mailed to petitioner on February 19, 1948.

#### III.

The taxes in controversy are federal income taxes for the calendar years 1944 and 1945, as follows:

1944 .....	\$2,041.07
1945 .....	2,867.32

---

Total .....	\$4,908.39
-------------	------------



IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(1) The respondent erroneously computed the tax upon \$5,000.00 representing petitioner's community one-half of \$10,000.00 compensation for personal services paid to her husband and attributable to the years 1937, 1938, and 1939, upon the basis of including all of said sum in petitioner's 1944 income and taxing said entire amount at the rates applicable for the year 1944 rather than at the rates applicable for the years 1937, 1938 and 1939.

(2) Respondent erroneously failed and refused to compute the tax upon said \$5,000.00 income at the rates applicable for the years 1937, 1938 and 1939, to which years said income was attributable.

(3) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1944 and erroneously failed and refused to apply said section in making such computation.

(4) The respondent erroneously computed the tax upon \$5,750.00, representing petitioner's community one-half of \$11,500.00 compensation for personal services paid to petitioner's husband and attributable to the years 1939 and 1940, upon the basis of including all of said sum in petitioner's 1945 income and taxing said entire amount at the rates

applicable for the year 1945 rather than at the rates applicable for the years 1939 and 1940.

(5) Respondent erroneously failed and refused to compute the tax upon said \$5,750.00 of income at the rates applicable for the years 1939 and 1940, to which years said income was attributable.

(6) The respondent erroneously determined that the provisions of Section 107 of the Internal Revenue Code are not applicable in the computation of petitioner's tax for the calendar year 1945 and erroneously failed and refused to apply said section in making such computation.

(7) The respondent erred in failing and refusing to determine that petitioner has overpaid her income taxes for the calendar year 1944.

## V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

(1) During the years 1937 through 1945, and up to and including the present date, petitioner's husband has been an officer of the Commodore Hotel Co., Ltd., 1203 West Seventh Street, Los Angeles, California. Said corporation keeps its books and files its income tax returns on the cash receipts and disbursements basis.

(2) By appropriate action of its board of directors evidenced by proper corporate resolution, Commodore Hotel Co., Ltd., undertook and agreed to pay

to petitioner's husband monthly from and after January 1, 1937, a salary of \$600.00 per month, said salary to continue monthly without interruption.

(3) During each of the years 1937, 1938, 1939, and 1940, said corporation suffered deficits from its operations and its capital was impaired. It owed substantial amounts to outside creditors. Because of its straitened circumstances it was unable, during each of said years, to pay to petitioner's husband the full amount of salary which it had been authorized by its board of directors to pay, and which it had agreed to pay. The corporation, however, at all times recognized its liability for the full amount authorized to be paid to petitioner's husband.

(4) During the year 1944 said corporation first found itself in a financial position which would permit it to pay to petitioner's husband a portion of the back salary theretofore unpaid. During said year it actually paid to petitioner's husband the sum of \$10,000.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of the unpaid salary of petitioner's husband for the years 1937, 1938, and 1939.

(5) In preparing their federal income tax returns for the calendar year 1944 petitioner and her husband reported as community property the receipt of said \$10,000.00 and computed the tax thereon in accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has

refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

(6) During the year 1945 said corporation paid to petitioner's husband the sum of \$11,500.00 on account of said back salary, which amount was attributable to the discharge, to the extent possible, of petitioner's husband's unpaid salary for the years 1939 and 1940.

(7) In preparing their federal income tax returns for the calendar year 1945 petitioner and her husband reported as community property the receipt of said \$11,500.00 and computed the tax thereon in accordance with the provisions of Section 107(d) of the Internal Revenue Code. The respondent has refused to permit the application of said section of the Internal Revenue Code in the computation of petitioner's tax for said year.

(8) Petitioner's income tax return for the calendar year 1944 disclosed a liability for taxes in the amount of \$6,337.31, which amount was paid on or before March 15, 1945. Petitioner's correct tax liability for said year 1944 is \$5,607.42. Petitioner has overpaid her 1944 income taxes in the amount of \$729.84, and refund of said amount is hereby claimed.

Wherefore, petitioner prays that this court may hear this proceeding and determine:

(1) That respondent erred in the particulars set forth in paragraph IV of this petition.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

/s/ HENRY C. DIEHL,

Counsel for Petitioner.

January 25, 1949.

State of California,

County of Los Angeles—ss.

Pauline Lindsey, being first duly sworn deposes and says: That she is the petitioner in the foregoing petition; that she has read said petition and is familiar with the facts contained therein, and that said facts are true and correct to the best of her knowledge and belief.

/s/ PAULINE I. LINDSEY.

Subscribed and sworn to before me this 7 day of February, 1949.

[Seal] /s/ LILLIAN S. FOLTZ,  
Notary Public in and for the County of Los Angeles, State of California.



## EXHIBIT A

Form 1279 (Rev. Mar. 1946)

SN-IT-7

Treasury Department, Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

Feb. 19, 1948

Internal Revenue  
Agent in Charge  
Los Angeles Division  
LA:IT:90D:LHP  
Mrs. Pauline Lindsey  
1203 West 7th Street  
Los Angeles 14, California

Dear Mrs. Lindsey:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944 and 1945 discloses a deficiency of \$4,908.39, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,

Commissioner,

By GEORGE D. MARTIN,

Internal Revenue Agent  
in Charge.

Enclosures:

Statement

Form of waiver

Statement

LA:IT:90D:LHP

Mrs. Pauline Lindsey

1203 West 7th Street

Los Angeles 14, California

Tax Liability for the Taxable Years

Ended December 31, 1944 and 1945

Years	Deficiency
1944 Income Tax.....	\$2,041.07
1945 Income Tax.....	2,867.32
Total .....	<hr/> \$4,908.39

In making this determination of your income tax liability careful consideration has been given to the report of examination dated March 17, 1947.

Adjustment to Net Income	
Taxable Year Ended December 31, 1944	
Net income as disclosed by return . . . .	\$21,841.76
Additional deduction:	
(a) Standard deduction . . . . .	250.00
<hr/>	
Net income adjusted . . . . .	\$21,591.76

Explanation of Adjustment

(a) In your return you elect to take the standard deduction provided in section 23(aa)(1) of the Internal Revenue Code, but claim only \$250.00 of the \$500.00 allowable. An additional deduction of \$250.00 is accordingly allowed.

In your return you disclose receipt in 1944 of compensation for personal services in the amount of \$4,400.00 (your community half of \$8,800.00) attributable to the years 1938 and 1939 which you include in gross income. However, in the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1944.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not

applicable, and that the aforementioned \$4,400.00 constitutes income taxable at the rates in effect in the year received.

Computation of Alternative Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76
Less: Excess of net long-term capital gain over net short-term capital loss .....	1,550.08
Ordinary net income .....	\$20,041.68
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$19,541.68
Surtax on \$19,541.68 .....	\$ 7,017.09
Ordinary net income .....	\$20,041.68
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$19,541.68
Normal tax (3% of \$19,541.68) .....	586.25
Partial tax .....	\$ 7,603.34
Plus: 50% of \$1,550.08 .....	775.04
Alternative tax .....	\$ 8,378.38

Computation of Tax  
Taxable Year Ended December 31, 1944

Net income adjusted .....	\$21,591.76
Less: Surtax exemption .....	500.00
Surtax net income .....	\$21,091.76
Surtax .....	\$ 7,871.39
Net income adjusted .....	\$21,591.76
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$21,091.76
Normal tax at 3% .....	632.75
Total normal tax and surtax .....	\$ 8,504.14
Alternative tax .....	\$ 8,378.38
Correct income tax liability .....	\$ 8,378.38
Income tax liability shown on return, account No. 9020901 .....	6,337.31
Deficiency of income tax .....	\$ 2,041.07

## Net Income

Taxable Year Ended December 31, 1945

The net income of \$25,746.91 disclosed in your return is accepted as correct.

In your return you disclose receipt in 1945 of compensation for personal services in the amount of \$5,750.00 (your community half of \$11,500.00) attributable to the years 1939 and 1940. In the computation of your tax this income is excluded and the tax attributable to such income, computed at the lower rates in effect for such prior years, is added to the amount computed without regard to such income, the total of which is reported as your income tax liability for 1945.

It has been determined that the provisions of section 107 of the Internal Revenue Code are not applicable, and that the aforementioned \$5,750.00 constitutes income taxable at the rates in effect in the year received.



Computation of Alternative Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Excess of net long-term capital gain over net short-term capital loss .....	4,610.63
Ordinary net income .....	\$21,136.28
Less: Surtax exemption .....	500.00
Balance (surtax net income) .....	\$20,636.28
Surtax on \$20,636.28 .....	\$ 7,616.32
Ordinary net income .....	\$21,136.28
Less: Normal tax exemption .....	500.00
Balance subject to normal tax .....	\$20,636.28
Normal tax (3% of \$20,636.28) .....	619.09
Partial tax .....	\$ 8,235.41
Plus: 50% of \$4,610.63 .....	2,305.31
Alternative tax .....	\$10,540.72

Computation of Tax  
Taxable Year Ended December 31, 1945

Net income .....	\$25,746.91
Less: Surtax exemption .....	500.00
Surtax net income .....	\$25,246.91
Surtax .....	\$10,295.68
Net income .....	\$25,746.91
Less: Normal-tax exemption .....	500.00
Net income subject to normal tax .....	\$25,246.91
Normal tax at 3% .....	757.41
Total normal tax and surtax .....	\$11,053.09
Alternative tax .....	\$10,540.72
Correct income tax liability .....	\$10,540.72
Income tax liability shown on return, account No. 2381797 .....	7,673.40
Deficiency of income tax .....	\$ 2,867.32

Filed U.S.T.C. Feb. 9, 1949.

Served Mar. 1, 1949.

## The Tax Court of the United States

Docket No. 16756

R. L. LANGER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

## I. &amp; II.

Admits the allegations contained in paragraphs I & II of the petition.

## III.

Admits that the taxes in controversy are income taxes for the calendar year 1944. Denies the remainder of the allegations contained in paragraph III of the petition.

## IV.

Denies the allegations of error contained in paragraph IV of the petition.

V.

(1) to (4) inclusive. Denies the allegations contained in sub-paragraphs (1) to (4) inclusive of paragraph V of the petition.

(5) Admits the allegations contained in sub-paragraph (5) of paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner of Internal Revenue be approved.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,  
Special Attorney,  
Bureau of Internal Revenue.

Received and filed U.S.T.C. Jan. 26, 1948.

## The Tax Court of the United States

Docket No. 16757

ELEANORE LANGER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

## I. &amp; II.

Admits the allegations contained in paragraphs I and II of the petition.

## III.

Admits that the taxes in controversy are income taxes for the calendar year 1944. Denies the remainder of the allegations contained in paragraph III of the petition.

## IV.

Denies the allegations of error contained in paragraph IV of the petition.

V.

(1) to (4) inclusive. Denies the allegations contained in sub-paragraphs (1) to (4) inclusive of paragraph V of the petition.

(5) Admits the allegations contained in sub-paragraph (5) of paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner of Internal Revenue be approved.

/s/ CHARLES OLIPHANT,

ECC

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,  
Special Attorney,  
Bureau of Internal Revenue.

Received and filed Jan. 26, 1948.



## The Tax Court of the United States

Docket No. 18396

C. ABBOTT LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

## I. and II.

Admits the allegations contained in paragraphs I and II of the petition.

## III.

Admits that the taxes in controversy are Federal income taxes for the calendar years 1944 and 1945; denies the remainder of the allegations contained in paragraph III of the petition.

## IV.

(1) to (6), inclusive. Denies the allegations of error contained in subparagraphs (1) to (6), inclusive, of paragraph IV of the petition.

V.

(1) For lack of sufficient information as to the truth or correctness thereof denies the allegations contained in subparagraph (1) of paragraph V of the petition.

(2) and (3) Denies the allegations contained in subparagraphs (2) and (3) of paragraph V of the petition.

(4) Admits that during the year 1944 said corporation paid to the petitioner the sum of \$8,800.00; denies the remainder of the allegations contained in subparagraph (4) of paragraph V of the petition.

5) Admits that in preparing their Federal income tax returns for the calendar year 1944 petitioner and his wife reported as community property the receipt of said \$8,800. Further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (5) of paragraph V of the petition.

(6) Admits that during the year 1945 said corporation paid to the petitioner the sum of \$11,500; denies the remainder of the allegations contained in subparagraph (6) of paragraph V of the petition.

(7) Admits that in preparing their Federal income tax returns for the calendar year 1945, petitioner and his wife reported as community property the receipt of said \$11,500. Further admits

that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (7) of paragraph V of the petition.

VI. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,  
ECC,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.  
E. C. CROUTER,  
A. J. HURLEY,  
Special Attorneys,  
Bureau of Internal Revenue.

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[Title of Tax Court and Cause.]

Docket No. 18396

## ANSWER TO AMENDED PETITION

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the amended

petition of the above-named taxpayer, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the amended petition.

III. Admits that the taxes in controversy are Federal income taxes for the calendar years 1944 and 1945. Denies the remainder of the allegations contained in paragraph III of the amended petition.

IV. (1) to (7) inclusive. Denies the allegations of error contained in subparagraphs (1) to (7) inclusive of paragraph IV of the amended petition.

V. (1). Admits the allegations contained in subparagraph (1) of paragraph V of the amended petition.

(2). Admits that on April 14, 1937, the board of directors of Commodore Hotel Co., Ltd., authorized the payment of salary to petitioner in the amount of \$600.00 per month commencing as of January 1, 1937. Denies the remainder of the allegations contained in subparagraph (2) of paragraph V of the amended petition.

(3). Admits that during each of the years 1937, 1938, 1939 and 1940, said corporation suffered deficits from operations and in its capital account. Denies the remainder of the allegations contained in subparagraph (3) of paragraph V of the amended petition.

(4). Admits that during the year 1944 said corporation paid to the petitioner the sum of \$10,000.00. Denies the remainder of the allegations contained in subparagraph (4) of paragraph V of the amended petition.

(5). Admits that in preparing their Federal income tax returns for the calendar year 1944 petitioner and his wife reported as community property the receipt of said \$10,000.00; further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (5) of paragraph V of the amended petition.

(6). Admits that during the year 1945 said corporation paid to the petitioner the sum of \$11,500.00. Denies the remainder of the allegations contained in subparagraph (6) of paragraph V of the amended petition.

(7). Admits that in preparing their Federal income tax returns for the calendar year 1945 petitioner and his wife reported as community property the receipt of said \$11,500.00; further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder



of the allegations contained in subparagraph (7) of paragraph V of the amended petition.

(8). Admits that the amount of liability for taxes shown by petitioner on his income tax return for the calendar year 1944 was \$6,337.31. Denies the remainder of the allegations contained in subparagraph (8) of paragraph V of the amended petition.

VI. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,

E.C.C.

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,

L. C. AARONS,

Special Attorneys,

Bureau of Internal Revenue.

Filed T.C.U.S. Feb. 14, 1949.

## The Tax Court of the United States

Docket No. 18397

PAULINE LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

## I and II.

Admits the allegations contained in paragraphs I and II of the petition.

## III.

Admits that the taxes in controversy are Federal income taxes for the calendar years 1944 and 1945; denies the remainder of the allegations contained in paragraph III of the petition.

## IV.

(1) to (6), inclusive. Denies the allegations of error contained in subparagraphs (1) to (6), inclusive, of paragraph IV of the petition.

V.

(1). For lack of sufficient information as to the truth or correctness thereof denies the allegations contained in subparagraph (1) of paragraph V of the petition.

(2) and (3). Denies the allegations contained in subparagraphs (2) and (3) of paragraph V of the petition.

(4). Admits that during the year 1944 said corporation paid to petitioner's husband the sum of \$8,800.00; denies the remainder of the allegations contained in subparagraph (4) of paragraph V of the petition.

(5). Admits that in preparing their Federal income tax returns for the calendar year 1944 petitioner and her husband reported as community property the receipt of said \$8,800. Further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (5) of paragraph V of the petition.

(6). Admits that during the year 1945 said corporation paid to petitioner's husband the sum of \$11,500; denies the remainder of the allegations

contained in subparagraph (6) of paragraph V of the petition.

(7). Admits that in preparing their Federal income tax returns for the calendar year 1945, petitioner and her husband reported as community property the receipt of said \$11,500. Further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (7) of paragraph V of the petition.

VI. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,

E.C.C.

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,

A. J. HURLEY,

Special Attorneys,

Bureau of Internal Revenue.

Received and filed June 22, 1948.

[Title of Tax Court and Cause.]

Docket No. 18397

ANSWER TO AMENDED PETITION

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the amended petition.

III. Admits that the taxes in controversy are Federal income taxes for the calendar years 1944 and 1945. Denies the remainder of the allegations contained in paragraph III of the amended petition.

IV. (1) to (7) inclusive. Denies the allegations of error contained in subparagraphs (1) to (7) inclusive of paragraph IV of the amended petition.

V. (1). Admits the allegations contained in subparagraph (1) of paragraph V of the amended petition.

(2). Admits that on April 14, 1937, the board of directors of Commodore Hotel Co., Ltd., authorized the payment of salary to petitioner's husband in the amount of \$600.00 per month commencing as of January 1, 1937. Denies the remain-



der of the allegations contained in subparagraph (2) of paragraph V of the amended petition.

(3). Admits that during each of the years 1937, 1938, 1939 and 1940, said corporation suffered deficits from operations and in its capital account. Denies the remainder of the allegations contained in subparagraph (3) of paragraph V of the amended petition.

(4). Admits that during the year 1944 said corporation paid to petitioner's husband the sum of \$10,000.00. Denies the remainder of the allegations contained in subparagraph (4) of paragraph V of the amended petition.

(5). Admits that in preparing their Federal income tax returns for the calendar year 1944 petitioner and her husband reported as community property the receipt of said \$10,000.00; further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (5) of paragraph V of the amended petition.

(6). Admits that during the year 1945 said corporation paid to petitioner's husband the sum of \$11,500.00. Denies the remainder of the allegations contained in subparagraph (6) of paragraph V of the amended petition.

(7). Admits that in preparing their Federal income tax returns for the calendar year 1945 peti-

tioner and her husband reported as community property the receipt of said \$11,500.00; further admits that respondent has held Section 107(d) of the Internal Revenue Code inapplicable in the computation of petitioner's tax for said year. Denies the remainder of the allegations contained in subparagraph (7) of paragraph V of the amended petition.

(8). Admits that the amount of liability for taxes shown by petitioner on her income tax return for the calendar year 1944 was \$6,337.31. Denies the remainder of the allegations contained in subparagraph (8) of paragraph V of the amended petition.

VI. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,

E.C.C.

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

E. C. CROUTER,

L. C. AARONS,  
Special Attorneys,

Bureau of Internal Revenue.

Filed T.C.U.S. Feb. 19, 1948.

ORDER CONSOLIDATING THE CASES  
FOR TRIAL AND DECISIONMinutes of Proceedings The Tax Court  
of the United States

Docket Nos. 16756, 16757, 18396, 18397

Date February 9, 1949.

Place: Los Angeles, Calif.

Proceeding: Estate of R. L. Langer, Deceased,  
et al.

Assigned to: Judge Johnson.

\* \* \*

On the merits Yes. Oral motion of petitioner's counsel, proceedings were ordered consolidated. Petitioners in Docket Nos. 18396 and 18397, on oral motion were granted permission to file amended petitions. Respondent also granted time, on oral motion, to file amended answers.

Ordered: Submitted.

\* \* \*

/s/ NELLIE A. LINDLEY,  
Acting Deputy Clerk.

13 T.C. No. 59

The Tax Court of the United States

Docket Nos. 16756, 16757, 18396, 18397.

ESTATE OF R. L. LANGER, deceased, ELEA-  
NORE LANGER, Executrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

ELEANORE LANGER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

C. ABBOTT LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PAULINE LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Promulgated September 29, 1949.

## FINDINGS OF FACT AND OPINION OF THE TAX COURT

1. An insolvent corporation, wholly owned by its officers and their families, was in default in the payment of a note secured by deed of trust on its principal asset, a hotel, and after procuring advances for taxes and payment concessions from the creditor in 1937 and again in 1941, it paid no salaries to its officer-stockholders until after first realizing an operating profit in 1942.

The deferment in salary payment, held, on the evidence not due to an event similar in nature to a receivership within the meaning of section 107(d) (2)(A)(iv), Internal Revenue Code, there being no legally enforceable control of the corporation in any one other than its own officers. *Norbert J. Kenny*, 4 T.C. 750, distinguished.

Austin H. Peck, Jr., Esq., for the petitioners.

L. C. Aarons, Esq., for the respondent.

The Commissioner determined the following deficiencies in petitioners' income taxes:

Docket No.	Petitioner	1944	1945
16756	R. L. Langer .....	\$3,086.48	\$.....
16757	Eleanore Langer .....	3,099.06	.....
18396	C. Abbott Lindsey .....	2,041.07	2,867.32
18397	Pauline Lindsey .....	2,041.07	2,867.32

In so doing, he included in income taxable at current rates amounts received by R. L. Langer and C. Abbott Lindsey as back salary for prior years and reported by them and their wives, the other peti-



tioners, as community income taxable at the prior years' rates under the provisions of section 107(d), Internal Revenue Code. Respondent contends that the section is not applicable because (1) the deferment in payment was not caused by an event similar to receivership; (2) the employer was under no obligation to pay in prior years, and (3) the payments were less than 15 per cent of petitioners' gross incomes which should be computed to comprise receipts undiminished by the expenses of businesses from which they derived income. Petitioners reported and defend the inclusion of net profit from such businesses.

The proceedings were submitted upon a stipulation and exhibits, which we incorporate by reference as findings of fact, and oral testimony.

### Findings of Fact

R. L. Langer, deceased, and his widow, Eleanore Langer, petitioner in Docket No. 16757, resided in 1944 at Los Angeles, California, and filed separate income tax returns for 1944 with the collector of internal revenue for the sixth district of California. Langer died on July 6, 1948; his widow was appointed executrix of his estate, and as such was substituted for him as petitioner in Docket No. 16756. C. Abbott Lindsey and his wife, Pauline Lindsey, petitioners in Docket Nos. 18396 and 18397, reside at Los Angeles, California, and filed separate income tax returns for 1944 and 1945 with the same collector. All the returns were prepared on the basis of cash receipts and disbursements.

Langer and family and Lindsey and family each owned one-half of the single class of outstanding stock of the Commodore Hotel Co., a California corporation. This corporation owned and operated the Commodore Hotel in Los Angeles; kept its accounts and filed its income tax returns on the basis of cash receipts and disbursements. Langer was president and Lindsey secretary, and by resolution of April 14, 1937, the board of directors, which included Langer and Lindsey, voted that a salary of \$600 a month be paid to each from January 1, 1937, and "every month hereafter." Pursuant to this resolution there was paid to each a total of \$4,800 during 1937, but the corporation fell into financial difficulties and no further payments were made until 1942 or 1943. From 1933 until 1942 the corporation each year sustained operating losses, which reached a maximum of \$14,724.74 in 1939, and its balance sheets constantly indicated a deficit until 1946, reaching a maximum of \$63,867.69 in 1941.

In 1933 the corporation had placed a deed of trust on its hotel building and a chattel mortgage on the furnishings, its principal assets, to secure its 6 per cent note for \$241,581, payable in monthly installments of \$2,000. By 1937 it was not only delinquent in the payment of interest on this note to the extent of \$13,419, but the creditor had advanced funds for taxes on the hotel. On January 16, 1937, an agreement was reached with the then holder of the note, Pacific Mutual Life Insurance Co. (hereafter called

Pacific) whereby the corporation agreed to pay off the total due of \$255,000 with interest over a ten-year period in monthly installments beginning at \$500 and increasing to \$1,250. The corporation made the required payments with some slight delays until June 30, 1939, but Pacific had to make further advances for taxes, and by the end of August, 1941, the amount due the creditor had only been reduced to \$240,750. On September 16, 1941, Pacific and the corporation entered into a new agreement, reducing the interest on the balance to 5 per cent and extending the payment period to 1956. The corporation agreed to make a fixed monthly payment of \$1,400 and to pay 50 per cent of its net income to Pacific within 30 days of the end of each year. Net income for this purpose was defined as gross income less \$5,000, operating expenses "including usual and reasonable management charges," upkeep costs, taxes, interest and the principal payments on a second note for \$2,592.62 which the corporation gave to Pacific. This second note was paid off in 1942, and payments have since been made on the principal indebtedness substantially as required. Pacific refrained from foreclosing on the hotel because its officers felt that the corporation's properties were being capably and honestly handled and that Langer and Lindsey would ultimately work out their difficulties.

At a directors' meeting held January 2, 1942, Langer, the president, brought up the subject of officers' salaries, "adjusted at \$600 a month" but not "paid since the year 1937," and the repayment

of a \$2,000 loan which he and Lindsey had each made to the corporation. Payment of the salaries and loans were authorized "as soon as there is sufficient net money available," and in the event of nonpayment of the salaries, authority was voted the officers "to execute the Corporation's promissory note to pay said sums at a later date \* \* \* when the assets of the Corporation will permit." On January 2, 1943, the directors resolved that the salary of the president and of the secretary "be again set at \$600.00 per month for the current year of 1943," and salaries of \$7,200 were paid to each of them in that year.

After the corporation realized an operating income of \$9,755.23 in 1942 and of \$24,666.17 in 1943, the board of directors on January 3, 1944, mentioning that some salary payments were made in 1942, authorized the payment of back salaries to the officers, and recognized that there was owing to each \$1,200 for 1937 (\$2,400, as later corrected); \$7,200 for each of the years 1938, 1939, 1940, 1941, and \$3,900 for 1942. They then resolved that the corporation: \* \* \* pay all said back salaries to the respective officers \* \* \* as soon as it is able to do so.

Pursuant to this resolution the corporation paid \$17,200 to Langer and \$17,200 to Lindsey in 1944 and \$18,700 to Lindsey in 1945. Of the 1944 payments \$10,000 to each was on account of back salary; of the 1945 payments \$11,500 was on account of back salary to Lindsey. Near the close of 1944 the direc-



tors instructed Langer to address to the Salary Stabilization Unit of Treasury a letter requesting permission to pay officers' salaries for prior years. In the letter it was stated that "salaries for all years were authorized" but payments had been irregular because:

\* \* \* the corporation, on a "cash basis," suffered losses for most of the years in question, and did not have the necessary cash available for salary payments.

The Salary Stabilization Unit replied that payment of back salaries did not require its approval "provided there was a bona fide contractual liability on October 3, 1942."

At a directors' meeting held January 5, 1945, Langer, as president, stated that:

\* \* \* \$10,000 had been paid to each of the respective officers in 1944 as back salaries applied as follows, to-wit: \$2400 as owing for the year 1937; \$7200 as owing for the year 1938, and \$400 as part payment and owing for the year 1939, \* \* \*.

At a directors' meeting held December 5, 1945, the president was specifically authorized to pay \$3,000 of surplus on account of officers' back salaries.

On their separate income tax returns for 1944 Langer and wife and Lindsey and wife each reported \$5,000 as the community share of the \$10,000 paid as back salary to each husband in 1944, and each computed a tax on this share by reference to



rates applicable to years for which the salary was paid, invoking the benefits of section 107(d), Internal Revenue Code. Among items of gross income Langer and wife each reported \$15,610.36, set forth in Schedule C as "Profit from Business or Profession." As explained in the schedule, they owned a half interest in the Clifton and Figueroa Hotels. From total receipts of \$22,311.71 of the Clifton Hotel they subtracted "business expenses" under itemized headings of Schedule C and arrived at a "net profit" of \$14,498.01, of which one-half, or \$7,249, was treated as their community income. Each included a half of the latter figure, or \$3,624.50, in gross income, item 4, of the individual return in arriving at the total gross income from which they subtracted the statutory deductions. In like manner they reported total receipts of \$271,987.99 of the Figueroa Hotel, deducted business expenses and arrived at a net community profit of \$31,220.71, of which each included a half, or \$15,610.35, in item 4 of gross income. Total gross income for 1944, as reported by Langer, was \$30,729.45; as reported by his wife, \$31,854.43.

On their income tax returns for 1945 Lindsey and wife each reported one-half of the \$11,500 received by Lindsey as back salary in 1945, and each computed a tax on that by reference to section 107(d), attributing \$6,800 to 1939 and \$4,700 to 1940. Each reported on the 1944 return \$23,667.65 as an item of gross income, set forth in Schedule C as "Profit

from Business or Profession.” As explained in the schedule they operated the Commodore Cafe from which each reported total receipts of \$131,547.39, cost of goods sold \$50,493.85, other business deductions \$57,385.88, resulting in a net profit of the \$23,667.65, which each included in gross income. For 1945 each similarly computed and included in gross income a net profit of \$20,421.44 from operation of the cafe. (Apparently the receipts, costs and expenses reported by each was a half of the business gross.)

As to each petitioner the Commissioner determined that section 107(d) was not applicable, and adding the amounts received as back salary to other income reported, he recomputed the tax at the rates in effect for the year of receipt.

### Opinion

Johnson, Judge:

Under the view that Langer and Lindsey each received the \$10,000 paid in 1944 and that Lindsey received the \$11,500 paid in 1945 as back salary attributable to prior years' services, petitioners claim the benefit of section 107(d), which provides:

(1) In General.—If the amount of the back pay received or accrued by an individual during the taxable year exceeds 15 per centum of the gross income of the individual for such year, the part of the tax attributable to the inclusion of such back pay in gross income for the taxable year shall not

be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the taxable years to which such portions are respectively attributable, as determined under the regulations prescribed by the Commissioner with the approval of the Secretary.

Section 107(d)(2) defines "back pay" as:

\* \* \* (A) remuneration, including wages, salaries \* \* \* received or accrued during the taxable year by an employee for services performed prior to the taxable year for his employer and which would have been paid prior to the taxable year except for the intervention of one of the following events: (i) bankruptcy or receivership of the employer; (ii) dispute as to the liability \* \* \*; (iii) if the employer is the United States, a State \* \* \*, lack of funds appropriated to pay such remuneration; or (iv) any other event determined to be similar in nature under regulations prescribed by the Commissioner with the approval of the Secretary; \* \* \*.

Petitioners contend that the corporation would have paid the salaries in the years when the services were rendered except for the intervention of an event similar in nature to bankruptcy or receivership. They argue that the corporation's continued operation of the hotel was by Pacific's suffrance; that if salaries had been paid to the officer-stockholders, that suffrance would have ceased as Pacific kept close watch over the corporation's affairs for protection of

its loan, even advancing funds needed for taxes. Admitting that no specific agreement forbade the payment of salaries to officers, they assert that any such payment, made in the corporation's precarious financial condition, would have invited foreclosure by the creditor. Respondent stresses the absence of any contractual or legal restriction on payment, and argues that a straitened financial condition is not similar in nature to bankruptcy or receivership, and that in any event no salaries were authorized after 1937, and the corporation was under no obligation to pay.

The issue raised squarely presents for decision whether or not financial difficulties and a factual (but not a legal) necessity which restricts a corporation's freedom of action may be deemed an event similar in nature to a receivership under regulations prescribed by the Commissioner. Section 29.107-3, Regulations 111 as amended, which relates to section 107(d)(2) of the Code, adds nothing to the language of the statute in this respect..

We agree with petitioners that very cogent circumstances deterred the corporation from paying its officer-shareholders any salary during the period of financial distress. Pacific was in a position to foreclose on the hotel and furnishings at any time.

It forebore to do so, and even aided the debtor by paying taxes on the hotel in substantial amounts and agreeing to more favorable loan terms on two occasions. In the words of Pacific's loan officer, this



consideration was shown because he felt "that the properties were being capably and honestly handled," and he expected that Langer and Lindsey "ultimately would work out their difficulties." We can not believe that he would have felt so if they had increased the corporation's steady operating losses by annual withdrawals of \$14,400 as salaries for themselves.

Nonetheless we do not perceive in their voluntary restraint any resemblance to the restriction imposed by a receivership. Financial distress would normally induce a corporation's officers to adopt policies more cautious and conservative than those followed under conditions of prosperity, and by their forbearance to deplete corporate funds by salary payments petitioners' officer-shareholders displayed a prudence clearly indicated as necessary by existing circumstances. But the decision was theirs to make, and they made it. Under a receivership the decision would not have been theirs. Although the receiver might well have made the same decision, in so doing he would have exercised a control conferred on him by law to the exclusion of the corporate officers and legally enforceable without reference to them. It is this legally enforceable control in another that we deem to be the essential characteristic of a bankruptcy or receivership. In *Norbert J. Kenny*, 4 T.C. 750, the creditor held it to a limited extent by virtue of contract. But here the corporation's officers were restricted only by



the dictates of prudence. We are of opinion that their decision and the corporation's straitened circumstances were not similar in nature to a receivership within the meaning of section 107(d)(2), and accordingly hold that the section is here inapplicable.

This holding makes it unnecessary to decide whether or not the corporation was under an obligation to pay the salaries in controversy during the preceding years and whether or not the amounts of the payments made in 1944 and 1945 were less than 15 per cent of the recipient's respective gross incomes for those years.

Reviewed by the Court.

Decisions will be entered for the respondent.

[Seal]: Tax Court of the United States.

Served Sept. 29, 1949.

The Tax Court of the United States  
Washington

Docket No. 16756

ESTATE OF R. L. LANGER, deceased, ELEA-  
NORE LANGER, Executrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated September 29, 1949, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1944 in the amount of \$3,086.48.

[Seal]     /s/ LUTHER A. JOHNSON,  
Judge.

Entered Sept. 29, 1949.

Served Oct. 3, 1949.

The Tax Court of the United States

Washington

Docket No. 16757

ELEANORE LANGER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated September 29, 1949, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1944 in the amount of \$3,099.06.

[Seal]     /s/ LUTHER A. JOHNSON,  
Judge.

Entered Sept. 29, 1949.

Served Sept. 30, 1949.

The Tax Court of the United States  
Washington

Docket No. 18396

C. ABBOTT LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion promulgated September 29, 1949, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1944 and 1945 in the respective amounts of \$2,041.07 and \$2,867.32.

[Seal]     /s/ LUTHER A. JOHNSON,  
Judge.

Entered: Sept. 29, 1949.

Served: Sept. 30, 1949.

The Tax Court of the United States  
Washington

Docket No. 18397

PAULINE LINDSEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion promulgated September 29, 1949, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1944 and 1945 in the respective amounts of \$2,041.07 and \$2,867.32.

[Seal]     /s/ LUTHER A. JOHNSON,  
Judge.

Entered: Sept. 29, 1949.

Served: Sept. 30, 1949.



In the United States Circuit Court of Appeals  
for the Ninth Circuit

Docket Nos. 16756, 16757, 18396, 18397

ESTATE OF R. L. LANGER, deceased, ELEA-  
NORE LANGER, Executrix; ELEANORE  
LANGER; C. ABBOTT LINDSEY; and  
PAULINE LINDSEY,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION FOR REVIEW OF DECISION OF  
THE TAX COURT OF THE UNITED  
STATES

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

Estate of R. L. Langer, deceased, Eleanore  
Langer, Executrix; Eleanore Langer; C. Abbott  
Lindsey; and Pauline Lindsey, Petitioners in the  
above-entitled cases which were consolidated for  
trial, hereby petition this Court to review the de-  
cision of The Tax Court of the United States here-  
tofore entered in said proceeding on September  
29, 1949. Petitioners respectfully represent:

I.

Jurisdiction

This petition is filed pursuant to Internal Reve-

nue Code sections 1141 and 1142, 26 U.S.C.A., sections 1141 and 1142.

## II.

### Nature of Controversy

The present controversy relates to the proper determination of the federal income tax liability of petitioners Estate of R. L. Langer, deceased, Eleanore Langer, Executrix (Tax Court Docket No. 16756), and Eleanore Langer (Tax Court Docket No. 16757) for the calendar year 1944, and the federal income tax liability of petitioners C. Abbott Lindsey (Tax Court Docket No. 18396) and Pauline Lindsey (Tax Court Docket No. 18397) for the calendar years 1944 and 1945.

Respondent determined deficiencies in income taxes of petitioners in Dockets Nos. 16756 and 16757 for the calendar year 1944 as follows:

Estate of R. L. Langer, deceased, Eleanore	
Langer, Executrix .....	\$3,086.48
Eleanore Langer .....	3,099.96

Respondent determined deficiencies in income taxes of petitioners C. Abbott Lindsey and Pauline Lindsey for the calendar years 1944 and 1945 as follows:

C. Abbott Lindsey .....	1944	\$2,041.07
	1945	2,867.32
Pauline Lindsey .....	1944	2,041.07
	1945	2,867.32

The Tax Court of the United States, by its said

decision, sustained respondent's determinations. Petitioners hereby petition for a review of said decision of The Tax Court of the United States.

### III.

#### Venue

Petitioners filed their respective separate federal income tax returns for the calendar years 1944 and 1945 with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California. Accordingly, petitioners are petitioning for a review of said decision of The Tax Court of the United States by this United States Circuit Court of Appeals for the Ninth Circuit.

Wherefore, your petitioners pray that this Court review said decision of The Tax Court of the United States, reverse the same, and issue such order or orders as may be proper in the premises.

Dated: December 1, 1949.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

Attorneys for Petitioners.

State of California,  
County of Los Angeles—ss.

Austin H. Peck, Jr., being first duly sworn, on oath deposes and says:

I am one of the attorneys for the petitioners in

this proceeding. I have read the foregoing petition and am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information, and belief. This petition is not filed for purposes of delay, and I believe that petitioners are justly entitled to the relief sought.

/s/ AUSTIN H. PECK, JR.

Subscribed and sworn to before me this 6th day of December, 1949.

[Seal] /s/ LILLIAN S. FOLTZ,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 28, 1950.

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[Title of Court of Appeals and Cause]

NOTICE OF FILING OF PETITION FOR REVIEW OF DECISION OF THE TAX COURT OF THE UNITED STATES

To the Commissioner of Internal Revenue, Washington, D. C.:

You are hereby notified that petitioners in the above entitled proceeding in the Tax Court of the United States have filed, concurrently herewith, their petition to the United States Circuit Court of Appeals for the Ninth Circuit for review of the decision of the Tax Court in said proceeding. A

copy of said petition for review, together with this notice, are hereby served on you.

Dated: December 6, 1949.

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

Attorneys for Petitioners.

### Affidavit of Service

State of California,

County of Los Angeles—ss.

Beulah M. Godges, being first duly sworn, on oath, deposes and says:

That she is a citizen of the United States and a resident of the County of Los Angeles, California; that she is not a party to the within action; and that her business address is 411 West Fifth Street, Los Angeles 13, California.

That on the 6th day of December, 1949, she served the Notice of Filing of Petition for Review of Decision of the Tax Court of the United States and Petition for Review of Decision of the Tax Court of the United States on the respondent by placing a true copy of each in an envelope addressed to the attorney of record for said respondent at the office address of said attorney, as follows: "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C."; and by



then sealing said envelope and depositing the same with postage thereon fully prepaid, in the United States mail at Los Angeles, California; and that there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ BEULAH M. GODGES.

Subscribed and sworn to before me this 6th day of December, 1949.

[Seal] /s/ LILLIAN S. FOLTZ,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 28, 1950.

Received and filed T.C.U.S. Dec. 12, 1949.

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[Title of Court of Appeals and Cause]

NOTICE OF FILING OF DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL  
AND STATEMENT OF POINTS

To the Commissioner of Internal Revenue, Washington, D. C.:

You are hereby notified that petitioners in the above entitled proceeding in the Tax Court of the United States have filed with the Clerk of the Tax Court petitioners' designation of contents of record on appeal and statement of points. A copy

thereof, and of this notice, are hereby served upon you.

Dated: December 6, 1949.

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

Attorneys for Petitioners.

### Affidavit of Service

State of California,

County of Los Angeles—ss.

Beulah M. Godges, being first duly sworn, on oath, deposes and says:

That she is a citizen of the United States and a resident of the County of Los Angeles, California; that she is not a party to the within action; and that her business address is 411 West Fifth Street, Los Angeles 13, California.

That on the 6th day of December, 1949, she served the Notice of Filing of Designation of Contents of Record on Appeal and Statement of Points, to which this affidavit is attached and the Designation of Contents of Record on Appeal and Statement of Points, on the respondent by placing a true copy of each in an envelope addressed to the attorney of record for said respondent at the office address of said attorney, as follows: "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C."; and by then sealing said envelope and depositing the same with postage

thereon fully prepaid, in the United States mail at Los Angeles, California; and that there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ BEULAH M. GODGES.

Subscribed and sworn to before me this 6th day of December, 1949.

[Seal] /s/ LILLIAN S. FOLTZ,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 28, 1950.

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[Title of Causes.]

### CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 27, inclusive, constitute and are all of the original papers and proceedings before The Tax Court of the United States as set forth in the "Designation of Contents of Record on Review" on file in my office as the original record in the above entitled proceedings and in which the petitioners in The Tax Court proceedings have initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand

and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 11th day of January, 1950.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk.

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[Endorsed]: No. 12456 United States Circuit Court of Appeals for the Ninth Circuit. Estate of R. L. Langer, Deceased, Eleanore Langer, Executrix, Eleanore Langer, C. Abbott Lindsey and Pauline Lindsey, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed January 17, 1950.

            /s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

Docket No. 12456

ESTATE OF R. L. LANGER, deceased, ELEA-  
NORE LANGER, Executrix; ELEANORE  
LANGER; C. ABBOTT LINDSEY; and  
PAULINE LINDSEY,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL AND STATEMENT OF  
POINTS

To Paul P. O'Brien, Clerk of the United States  
Circuit Court of Appeals for the Ninth Cir-  
cuit, San Francisco, California:

Petitioners in the above entitled consolidated  
proceedings hereby designate the following portions  
of the record before the Tax Court of the United  
States to be contained in the record on review  
before the United States Circuit Court of Appeals  
for the Ninth Circuit:

(1) Petition of petitioner R. L. Langer (Docket  
No. 16756).

(2) Order substituting Eleanore Langer, Execu-  
trix of the Estate of R. L. Langer, deceased, as  
petitioner in place of R. L. Langer, deceased  
(Docket No. 16756).



(3) Petition of petitioner Eleanore Langer (Docket No. 16757).

(4) Petition and amended petition of petitioner C. Abbott Lindsey (Docket No. 18396).

(5) Petition and amended petition of petitioner Pauline Lindsey (Docket No. 18397).

(6) Answer to petition of petitioner Estate of R. L. Langer, deceased, Eleanore Langer, Executrix (Docket No. 16756).

(7) Answer to petition of petitioner Eleanore Langer (Docket No. 16757).

(B) Answer to petition and amended petition of petitioner C. Abbott Lindsey (Docket No. 18396).

(9) Answer to petition and amended petition of petitioner Pauline Lindsey (Docket No. 18397).

(10) Minute order, or other order, of the Tax Court consolidating the cases for trial and decision.

(11) Findings of fact and opinion of the Tax Court.

(12) Decisions of the Tax Court.

(13) The petition for review of the decision of the Tax Court and notice of filing of petition for review, together with proof of service of said petition and said notice.

(14) This designation of contents of record on appeal and statement of points and the notice of filing thereof, together with proof of service of said designation and notice.

Statement of Points on Which Petitioners  
Intend to Rely

(1) The Tax Court erred in entering decisions for the respondent.

(2) The Tax Court erred in not entering decisions for petitioners and each of them.

(3) The Tax Court erred in failing to find or conclude that there were no deficiencies in income taxes of petitioners or any of them for the calendar years involved.

(4) The Tax Court erred in its finding that the failure of Commodore Hotel Co., Ltd., to pay full officers' salaries authorized for the years 1937, 1938, 1939, and 1940 was the consequence of a restraint voluntarily imposed upon itself by said corporation as a result of serious financial difficulties rendering payment of such salaries impossible.

(5) The Tax Court erred in its conclusion that factual necessity restricting a corporation's freedom of action, resulting from serious financial difficulties rendering payment of officers' salaries impossible if corporate operations were to continue is not an event similar in nature to bankruptcy or receivership, for purposes of section 107(d), Internal Revenue Code, 26 U.S.C.A., section 107(d).

(6) The Tax Court erred in its conclusion that the existence of a legally enforceable control in another is the essential characteristic of bankruptcy or receivership, and that, for purposes of section 107(d), Internal Revenue Code, 26 U.S.C.A., sec-

tion 107(d), an event cannot be similar in nature to bankruptcy or receivership if such element of control does not exist.

(7) Assuming, but not conceding, that the Tax Court did not err in its conclusion that the existence of a legally enforceable control in another is the essential characteristic of bankruptcy or receivership, nevertheless the Tax Court erred in its finding or conclusion that such control in another did not exist in this case.

(8) The Tax Court erred in its conclusion that section 107(d), Internal Revenue Code, 26 U.S.C.A., section 107(d) was not properly invoked by petitioners in the determination of their federal income tax liability for the years here involved.

(9) The Tax Court erred in failing to find or conclude that petitioners C. Abbott Lindsey and Pauline Lindsey have overpaid their federal income taxes for the year 1944.

Dated: January 23, 1950.

Respectfully submitted,

/s/ DANA LATHAM,

/s/ AUSTIN H. PECK, JR.,

Attorneys for Petitioners.

#### Affidavit of Service

State of California,

County of Los Angeles—ss.

Zoe E. Porter, being first duly sworn, on oath, deposes and says:

That she is a citizen of the United States and a resident of the County of Los Angeles, California; and that she is not a party to the within action; and that her business address is 411 West Fifth Street, Los Angeles 13, California.

That on the 23rd day of January, 1950, she served the Designation of Contents of Record on Appeal and Statement of points on the respondent by placing a true copy thereof in envelopes addressed to the attorneys of record for said respondent at the office address of said attorneys, as follows: "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C." and "Theron L. Caudle, Assistant Attorney General, United States Department of Justice, Washington 25, D. C."; and by then sealing said envelopes and depositing the same with postage thereon fully prepaid, in the United States mail at Los Angeles, California; and that there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ ZOE E. PORTER.

Subscribed and sworn to before me this 23rd day of January, 1950.

[Seal] /s/ LILLIAN S. FOLTZ,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 28, 1950.

